The Solicitors' Journal

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CURRENT TOPICS

Historical Records

LORD GREENE, writing to *The Times* of 14th October, from the Public Record Office, Chancery Lane, said that in the post-war period grave risks still threaten to deprive the nation of irreplaceable historical material. "In particular, owing to shortage of space and the reorganisation due to war damage and post-war conditions, many solicitors find themselves faced with problems of custody never experienced before. They need some recognised method for the disposal of accumulations of documents in their offices which are no longer required for current legal purposes; accumulations which in many cases have grown during generations, and sometimes during centuries, to very large dimensions." He added that the call for action is urgent, and the Records Preservation Section of the British Records Association is planning intensive work for the complete examination of unwanted accumulations of documents of this kind, and the deposit of those which are valuable for historical purposes, with the consent of the owners or custodians, in suitable repositories where their safe custody and availability for study will be assured. It can no longer be continued without some financial provision. The association has therefore decided to start a special fund, and appeals for contributions. Donations should be sent to the Honorary Treasurer, British Records Association, Hoare's Bank, 37, Fleet Street, E.C.4; correspondence for the Records Preservation Appeals Committee may be addressed care of the Public Record Office, Chancery Lane, W.C.2.

The Education of Justices

CORRESPONDENCE courses, if seriously taken in regular doses, can do much good, but, like medicines, they must only be regarded as palliatives and sedatives to tide over an interim period before a real course of health improvement can be begun. It is therefore not a bad sign that the Magistrates' Association now have available a school, which will provide twenty "lectures" by post every fortnight, on the law of evidence and procedure and the criminal law. In announcing this news at the annual meeting of the Magistrates' Association on 18th October, VISCOUNT SANKEY said that although the course was intended for new magistrates, any member of the Magistrates' Association could take part. The fee for the course is £5 5s. The editor of the *Magistrate*, Mr. W. THODAY, is arranging the course, and the first session will run from November or December to April. With each lecture there is to be sent a form on which the student may put questions, which will be answered by post, and, at the option of students, there will be a test paper at the end of the course. The syllabus includes classification of offences, jurisdiction of justices, proceedings at the hearings of indictable and summary cases, elements of criminal law, evidence, punishment and treatment of offenders, fines, the award of costs, appeals, juvenile courts, and legal aid. "It is extremely difficult for a magistrate to get to know the law," Viscount Sankey said. "It will be of great advantage to magistrates who wish to join it to give them a good idea of what the law really is and how it is administered." This is a welcome step, but it is only a step, and until some form of compulsory preliminary legal education is provided for candidates for the bench, the magistrates' courts will not have the full public confidence which they deserve.

Courts Martial Appeals

SOME relief will be felt at the announcement by the Secretary of State for War in the Commons on 15th October that a committee is to be set up to investigate the subject of appeals from courts martial in the light of recent war experience. Not quite so much satisfaction will be felt at his statement that both the Darling Committee of 1919 and the Oliver Committee of 1938 advanced weighty reasons against setting up service appeal courts. It is to be hoped that this is not a hint that, whatever the committee decides, the government will lean towards the usual official attitude that "morning's at seven, all's right with the world." That this was the official attitude on the two previous occasions when committees reported is borne out by the fact, as Lieut.-Col. SIR WILLIAM ALLEN stated in a supplementary question, that both the earlier committees made many recommendations that would have been most helpful both to courts-martial and to prisoners, and not one of those recommendations had been carried out by the War Office. Lieut.-Col. DONALD KABERRY, a Leeds solicitor and formerly Senior Legal Officer of the Military Government in Hamburg, in the course of an excellent article in the *Yorkshire Post* of 12th October, considered that there was room for argument whether or not it was proper for the Deputy Judge-Advocate General to retire with the other members of the court after he has summed up to them. Another matter which the writer said may call for reform is the question of the defending officer. "If an accused person cannot have professional legal assistance (and 'in the field' this is usually out of the question for geographical reasons), he should have the services of an officer adequately trained in legal procedure of courts-martial; and that officer should always be an officer of the same rank as the prosecuting officer." The Army Council's appeal earlier this year to The Law Society for the compilation of a list of solicitors willing to go to Germany to defend accused persons was a step forward, in the opinion of the writer. He also suggested that greater use could be made of the provisions in the rules of procedure for officers to sit "under instruction" in a court-martial. These are only a few of the matters, including the right of appeal, which need attention, and the terms of

reference to the committee should be wide enough to cover them all. Above all, the inquiry must not be allowed to become, as it did in 1919 and 1938, a " bootless inquisition."

Articled Clerks of Public Notaries

IN the House of Lords on 10th October the Lord Chancellor moved the second reading of the Public Notaries (War Service of Articled Clerks) Bill. He described it as a Bill to enable young men who aspired to qualify for the qualification of a public notary to count the time of their national service in this war as part of the period required by law for their apprenticeship, provided that they actually served as apprentices for not less than two years. He explained that the full period is five years outside London, where nearly all the notaries also practise as solicitors, and seven years inside London, where the notaries are required to be members of the Scriveners' Company, becoming experienced in the laws and languages of foreign countries, but they do not practise as solicitors. His lordship said that in this war a corresponding revision had been made for solicitors' articled clerks by s. 3 of the Solicitors (Emergency Provisions) Act, 1940. He added that notaries are deliberately restricted as to numbers. The approximate number now practising in England and Wales is 550, and the number of apprentices serving their articles is, at the present time, about one hundred. LORD MAUGHAM, supporting the Bill, said that the arrangements set out were well worded and proper.

War Damage: Private Chattels Payments

IN answer to a question in the Commons by Mr. CARSON on 15th October, as to whether the Chancellor of the Exchequer had yet decided to make any change in the amount of settlement of claims that fall within the Private Chattels Scheme of the War Damage Act, 1943, Pt. II, in view of the increase in price levels between the date of damage and payment, Mr. DALTON stated that the Government intended that these payments, together with accrued interest at 2½ per cent., less tax, should be financially discharged as soon as possible next financial year. As regards details, he asked members to await a full statement, to be made by the President of the Board of Trade. In his statement in the Commons on 21st October Sir Stafford Cripps said that the Government aimed at making these payments in July, 1947, and would also make supplementary payments in certain cases where the incident occurred before the end of 1941. Further comment on this matter will appear next week.

Accountants' Certificates

THE attention of solicitors is drawn to the Solicitors Act, 1941 (Appointed Day) Order, 1946, dated 2nd August, 1946 (S.R. & O., 1946, No. 1651/L.21), by which the Lord Chancellor, in pursuance of subs. (2) of s. 30 of the Solicitors Act, 1941, appointed the 10th day of August, 1946, as the day on which s. 1 of the Act, which relates to the delivery of accountants' certificates to the Registrar of Solicitors and for other matters connected therewith, shall come into operation. The subsection enables the Lord Chancellor to fix a day or days for the coming into operation of ss. 1 and 2, and s. 1 provides for the delivery of an accountant's certificate to the Registrar once in every practice year. S.R. & O., 1946, No. 1650/L.20 (p. 518 of this issue) appoints 16th November, 1942, as the day on which s. 2 of the Act comes into operation. A booklet prepared by The Law Society on " Solicitors' Accounts " is being sent to every member, and additional copies are obtainable at 2s. each.

Rent Tribunal Decisions and Evictions

A MINISTRY of Health circular to local authorities in whose areas tribunals under the Furnished Houses (Rent Control) Act have been set up, mentions that in a number of cases, in spite of the protection afforded by the Act to lessees of furnished lettings who make applications to tribunals, lessors have nevertheless evicted lessees making such applications, and thus made them homeless. The circular points out that the fact that the lessee and his family are homeless aggravates the present difficulties due to the housing shortage. A more direct remedy is therefore necessary, and this, in the Minister's view, would best be secured by the exercise in suitable cases of requisitioning powers. By the circular, the Minister delegates to the clerk of the council power to requisition occupied premises in cases of eviction or threatened eviction before the expiry of the period laid down under s. 5 of the Act (the three months' period of protection). It is stated that where the premises in respect of which a reference has been made to a tribunal is part of a house and is without separate access or services, the only means of effectively securing the retention of the premises and preventing the lessee from becoming homeless would be to requisition the whole house (suitable arrangements being made for other occupants to remain), and the Minister's delegation extends to such a requisition where this is necessary.

Recent Decisions

In *Bracken* v. *Lewcock*, on 15th October (*The Times*, 16th October), WYNN-PARRY, J., held that, where a statement of claim in a libel action was delivered on 4th September, 1946, and it was directed that the defence should be delivered on 18th September, but no defence was delivered, no leave to deliver a defence would thereafter be granted, and accordingly entered judgment on a motion for judgment. The defendant had appeared in person on the hearing of an application for an interim injunction and a note of the order directing delivery of a defence had been entered in the registrar's book, which the defendant signed. He obtained the concession of an extra seven days, and when those expired he wrote to say that he was instructing a firm of solicitors. The defendant's counsel objected that as the order made in the vacation court had not been drawn up until 14th October, time would only begin to run then, but his lordship held that it was a matter on which he had such discretion as would enable him to do justice between the parties as there was no hard and fast rule for drawing up orders.

In *Bell London and Provincial Properties, Ltd.* v. *Reuben*, on 16th October (*The Times*, 17th October), the Court of Appeal (MORTON, SOMERVELL and ASQUITH, L.JJ.) held that they could not decide that a deputy county court judge had improperly exercised his discretion in refusing to grant possession of a flat on the ground of breach of covenant by the lessee in keeping a dog in the flat (Rent, etc., Act, 1933, s. 3 (1)), as the special circumstances of the defendant's health entitled the learned deputy judge to condone the breach of covenant. MORTON, L.J., added that such a decision could only be justified in very special circumstances.

In *In re an Application by La Marquise Footwear Inc.* on 16th October (*The Times*, 17th October), EVERSHED, J., allowed the company's appeal against a decision of the Registrar-General of Trade Marks refusing to register the word " Oomphies " in respect of footwear, and directed that the application for registration be allowed to go forward. His lordship said that in speaking of " Oomphies " as a word he was paying it a compliment, for it barely deserved an appellation which made it part of articulate speech, which was said to be the only distinguishing feature between the human race and brute beasts. It was the registrar's duty to consider the susceptibilities of people. But that a word having the meaning of, or reference to, sex appeal must be rejected for registration was too wide a statement.

In *Read* v. *Lyons & Co., Ltd.*, on 18th October (*The Times*, 19th October), the House of Lords (LORD SIMON, LORD MACMILLAN, LORD PORTER, LORD SIMONDS and LORD UTHWATT) dismissed the plaintiff's appeal and held that, where an employee of the Ministry of Supply was in lawful pursuance of her duty at the respondents' factory which they conducted as agents of the Ministry of Supply and where they carried on the business of filling shell cases with high explosive, and was injured as a result of a shell exploding, the defendants were not liable, as there was no negligence and the only ground of liability which could be considered, viz., the ground of absolute liability where a person brought dangerous matter on to his land and it escaped (*Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330) did not apply, as in the present case there was no " escape " from the defendants' factory.

COMPANY LAW AND PRACTICE

COSTS OF A WINDING-UP PETITION—I

IT is sometimes of importance to know what is likely to happen about the costs of a winding-up petition, and it is therefore of some interest to review the various rules that are generally applied in deciding this question.

In the first place, in a simple case where a petitioner presents a winding-up petition, the petition comes on in the ordinary way and an order is made, the practice is to give the petitioner the costs. Form 16 in the Appendix to the Winding-Up Rules, which is the form of order for winding up by the court, says on this subject: "And it is ordered that the costs of —— of the said petition be taxed and paid out of the assets of the said company." This form contains a blank and does not merely say "of the petitioner," for the general rule is that where the petition succeeds not only does the petitioner get his costs, but one set of costs is given to the contributories who support the petition and one to the creditors who support it. This rule is not an invariable one, but it has been generally followed now for many years.

A winding-up order is an order for the benefit of everybody concerned in the affairs of the company, for s. 178 provides that such an order shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and a contributory. The result of this is that the costs of the petition are a first charge on those assets of the company available for the ordinary creditors and must be paid in full in priority to any costs of the liquidator. In *Re Audley Hall Cotton Spinning Co.*, L.R. 6 Eq. 245, Lord Romilly, M.R., said: "I have always held that the petitioner is entitled to have his costs paid first; he is the person who has brought the matter before the court and obtained the order to wind up, and his costs are the first charge on the estate." This rule as to the petitioner's costs will extend to those of any creditors or contributories supporting the petition who are entitled to their costs, for r. 192 of the Winding-Up Rules now lays down the order in which the assets of a company in a winding-up by the court are to be applied, and, subject to various minor matters, the order of priority laid down provides first for the payment of the taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the court.

One other point which is perhaps worth noting in this connection is that if the petitioner has incurred costs outside the winding-up petition in establishing his debt, those costs will have the same priority as his costs of the petition. In *Re Universal Non-Tariff Fire Insurance Co.*, L.R. 19 Eq. 485; (1875) W.N. 54, the petitioner presented a winding-up petition. The company disputed its liability to pay the debt on which the petition was founded and the petition was ordered to stand over until the petitioners had proved their debt, and he proceeded to do this by bringing an action against the company which came on at the assizes, but there not being sufficient time to try the case the petitioners took a verdict for the amount of their debt, subject to a special case. This special case was not heard before the company was ordered to be wound up under supervision on another petition. Under that order the original petitioner claimed the amount of their debt and the debt was established by them before the judge who had ordered them to establish it at law. None the less, they were held entitled not only to their costs of their original petition, but also to the costs of their abortive effort to establish it at law.

It should also be borne in mind that it is not sufficient for a creditor or a contributory to turn up at the hearing of the petition in order to become entitled to costs. Winding-Up Rule 33 provides that every person who intends to appear on the hearing of the petition is to serve on or send to the petitioner or his solicitor notice of his intention to appear. The notice has to arrive before six o'clock on the day before the hearing, or if the hearing is on Monday, as it most frequently will be, before one o'clock on the preceding Saturday, and anybody who fails to comply with this rule is not allowed to appear at the hearing without special leave.

As is stated above, the usual rule is to allow one set of costs to the creditors who support the petition and one set to the contributories, if any, who support the petition, if the petition is successful. Where, however, creditors and contributories who support the successful side in a petition are represented by the same solicitor as the successful party, they will not generally get anything in respect of costs if the order made is the "usual order" as to costs (*Re Brighton Marine Palace & Pier Co.* [1897] W.N. 12). The whole question appears to be in the discretion of the taxing officer of the court, however, for in *Re Silberhütte Supply Co., Ltd.* [1910] W.N. 81 Neville, J., said: "The question is whether, where the same solicitor represents creditors and contributories either supporting or opposing a petition and instructs separate counsel to appear for the creditors and for the contributories, he is entitled to two sets of costs, or only one set of costs under the usual direction giving one set of costs to the parties attending. I think that the principle of *Re Brighton Marine Palace & Pier Co.* applies, and that the solicitor as a general rule is entitled only to one set of costs." At the same time this ruling will not interfere with the discretion of the taxing officer to allow in a proper case the costs of separate counsel instructed by the same solicitor, notwithstanding that only the usual order as to costs has been made.

To summarise the foregoing, you can state that as a general rule, where a petitioner succeeds in getting a company wound up, his costs will be a first charge on the assets of the company available for the creditors generally, but that charge will rank equally with the charge of the payment of any set of costs allowed to supporting creditors or contributories who have given notice of their intention to appear and are represented by separate solicitors and counsel from those of the successful petitioner.

One further qualification to this general rule should be noted, and that is that neither creditors nor contributories who appear to support a petition are entitled to their costs as of right, and if they merely appear for the purpose of getting those costs no order as to costs will be made in their favour. An example of a supporting creditor not getting his costs is to be found in *Re Hull & County Bank*, 10 Ch. D. 130. The creditor who appeared was a creditor for £32, and the company's solicitors offered to secure this debt either by providing him with a personal guarantee of the chairman and vice-chairman of the company, against whose solvency there was no suggestion, or, if he preferred it, by themselves giving an undertaking to see it paid. In these circumstances Jessel, M.R., pointed out that it was absolutely immaterial to the creditor how the company was wound up or that it was wound up at all, and he refused to allow him to get his costs under the usual order.

Turning now to the case where the petitioner brings on his petition, but fails to get a winding-up order, the position is similar, save that in this case the petitioner pays the company's costs and also that of the creditors and contributories who appear and are, on the principles indicated above, entitled to their one set of costs. This general rule applies both in cases where the petitioner is a creditor and where he is a contributory. In *Re New Gas Co.*, 5 Ch. D. 703, a contributory petitioned to wind up the company. The company opposed and was supported in its opposition by some of the creditors. The petition was dismissed and the opposing creditors were not given their costs. On appeal, however, Jessel, M.R., indicated that they they would be in an ordinary case, and the Court of Appeal gave them their costs of the appeal. Jessel, M.R., said: "I never heard of any distinction in this respect between a shareholder's petition

and a creditor's petition," and he pointed out that by the form of advertisement of the petition the creditors were invited to appear.

That case was followed in a rather peculiar case of *Re Diamond Fuel Co.* [1878] W.N. 11, where a petition by one of the contributories to wind up a company apparently admittedly insolvent was called a " professional one " by the Master of the Rolls and dismissed with costs. One set of costs was given to the shareholders and one to the creditors who opposed.

No doubt a great deal of this article will be familiar to most of the readers of it, but I propose next week to deal with the slightly more complicated cases of where there are several petitions and where a petition is dismissed by consent, and it is perhaps just as well to clarify the normal procedure in a simple case before proceeding to discuss those matters.

A CONVEYANCER'S DIARY

LIMITATION OF ACTIONS FOR THE RECOVERY OF LAND—II

THE next important point is as to settled land, in which term is included, for this purpose, land held on trust for sale. Under the existing machinery the tenant for life of settled land actually has the fee simple. Apart from a special provision in the Act, twelve years' possession adverse to him would, therefore, have barred not only his equitable life estate, but also his legal fee simple. If this situation had been left unchanged, very peculiar results would have followed. The squatter would apparently have acquired the legal estate in fee simple at a time when the rights of the reversioners would almost certainly not have been extinguished, so that the squatter himself would have held on trust for the reversioners. This position, of course, did not arise before 1926, because in the case of legal limitations, the tenant for life had only a legal life estate to be barred, while in the case of an equitable settlement, it was not at all clear that the squatters' possession was adverse to that of the trustees, since, once they had let the equitable life tenant into possession, they would have had difficulty in sustaining an action of trespass. Between 1926 and the coming into force of the Limitation Act in 1940, however, the unsatisfactory position stated above appears to have arisen. Fortunately, it does not seem to have led to any litigation. The Act of 1939, however, deals with this difficulty by s. 7. I am told that that section was introduced into the Act as an afterthought and there is considerable obscurity in its provisions; there seem so far to be no reported cases upon it. My impression is that its purpose is to preserve the legal estate of the tenant for life in just such an instance as I have stated. Subsection (1) provides that the provisions of the Act relating to land shall apply to equitable estates in land. Subsection (2) lays down that " Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life . . . his legal estate shall not be extinguished, if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act, and the legal estate shall accordingly remain vested in the tenant for life . . . and shall devolve in accordance with the Settled Land Act, 1925; but if and when every such right of action as aforesaid has been barred by this Act, the said legal estate shall be extinguished." I believe the effect of this enactment to be that instead of the squatter holding on trust for the remainderman, the tenant for life does so, but during his own life holds first upon trust for the squatter as a tenant *pur autre vie*. It is a most extraordinary position, but has the great advantage that the tenant for life still has power to make title to the legal estate, which continues to be vested in him and to be regulated by the Settled Land Act.

As regards land held on trust for sale, the rule before 1940 apparently was that since the only persons entitled to the land were the trustees (all others being entitled to interests in personalty) the adverse possession of the squatter was adverse to the trustees, and, since their estate was an absolute one, they were capable of losing it after twelve years, and did lose it. It was further held in *Bolling* v. *Hobday* (1882), 31 W.R. 9, that when the estate of the trustees was gone the trust also had gone, with the result that the equitable owners were in a far worse position in this case than they were in the case of a settlement not containing a trust for sale. This position has also been changed in that s. 7 (3) of the Limitation Act, 1939, provides: " Where any land is held upon trust including a trust for sale, and the period prescribed by this Act has expired for the bringing of an action to recover land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustees shall be extinguished." This subsection assimilates the case of land held on trust for sale to that of settled land, the only difference being that the person having the legal estate is, in the one case, the tenant for life, while in the other the trustees for sale have it.

In many cases relating to land it may be necessary to consider the effect of s. 19 of the Limitation Act, 1939, which deals with the position of trustees. Before this Act numerous complex and not very logical rules existed with reference to this part of the subject. Section 19, however, reduces them to great simplicity. The Act generally applies to trustees, and s. 19 (2) provides that in any case where proceedings are brought to recover trust property or for breach of trust, in respect of which a period of limitation is not provided by any other section of the Act, the period shall be six years from the date when the cause of action accrued, provided that the cause of action shall not be deemed to accrue to a person entitled to a future interest until that interest falls into possession. Overriding this and all other applications of the Act to trustees, there is the provision of subs. (1) by which " No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action (*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use." These provisions apply to trustees of all kinds, since the definition of " trustee " in the Act is, by s. 31, to be the same as that in the Trustee Act, 1925. By s. 68 (17) of that Act: " ' Trust ' does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions ' trust ' and ' trustee ' extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and ' trustee ' where the context admits, includes a personal representative."

All the provisions described above appear in Pt. I of the Limitation Act, 1939. Every period of limitation prescribed by that Act is subject to the extensions as to disability, fraud, mistake, acknowledgment and part payment which are laid down by Pt. II of the Act. Thus, if a person to whom there accrues a right of action to recover an interest in land is an infant, the action may be brought at any time within six years after the end of his infancy, whether or not it would otherwise have been barred sooner: s. 22. Proviso (*c*) to that section lays down that any action to recover land has to be brought within thirty years after the date on which the person under disability acquired the right of action or after it accrued to some person through whom he claims. Acknowledgment is a large subject which, perhaps, should be dealt with in a separate " Diary," and I shall say no more on it here. Part payment, of course, includes part payment either of interest or of principal or of rent.

Finally, and this is, perhaps, the most important of all, it has been repeatedly held that the title acquired by the squatter will be forced upon a purchaser under an open contract. But it is quite unsafe to make the facile assumption that a person who has been in possession for upwards of twelve years will necessarily have a squatter's title. It does not follow that the running of time has not been postponed by disability, or that there may not be successive interests some of which have not been affected by the statute at all I believe it to be true that, in every reported case where a vendor has succeeded in getting the court to force a statutory title upon a purchaser, he has been able to point to a particular flaw in his title which is cured by time, or has been able to indicate exactly how the lapse of time has disposed of the interests of the true owners. As Farwell, J., said in *Re Nisbet and Potts* [1905] 1 Ch. 391, at p. 402, "the court in these cases adjudicated upon the existence of the suggested title; it did not compel the purchaser to take a leap in the dark." Thus, where one is acting for a vendor and desires to enforce the statutory title, it is, generally speaking, necessary to supply the purchaser with evidence as to what the true title is and to show how each equitable and each legal interest thereto has been safely disposed of. Unless it is known that that can be done, it will be necessary to secure the insertion in the contract of provisions requiring the purchaser to make the necessary assumptions.

LANDLORD AND TENANT NOTEBOOK

"THE PREMISES" IN RENT CONTROL LEGISLATION

THE expression "the premises" occurs both in the Rent, etc., Restrictions (Amendment) Act, 1933, and in the Furnished Houses (Rent Control) Act, 1946. Neither statute defines it. In each case its use is somewhat unexpected. The Increase of Rent, etc., Restrictions Acts, 1920 to 1939, normally talk about "the dwelling-house," but in Sched. I to the 1933 Act, para. (*b*) mentions "using the premises or allowing the premises to be used for . . ." The context suggests that this may merely be a case of "elegant variation," and, as was suggested in the "Notebook" of 24th August (90 SOL. J. 402), this variation is not likely to lead to any difficulty. But in the case of the Furnished Houses (Rent Control) Act, 1946, where the word is used in s. 3 (2) (*b*) and s. 4 (1) (*a*), and of the Furnished Houses (Rent Control) Regulations, 1946, where it occurs in Sched. II, paras. 1 and 3, the exact meaning to be attached to it is, I intend to show, vital from the point of view of the sanction to this legislation.

For the scheme of the Act may be said to be this: the tribunal is to approve, reduce or increase the rent payable by a lessee for the use of furniture or for services (s. 2); when the decision is made, it is recorded in a register kept by the local authority (s. 3); after that, it is illegal to accept rent at a higher rate (s. 4). But, rent for what? To illustrate what I am driving at, let us take the case of a lessor of furnished rooms who, having had the rent thereof reduced, determines the tenancy, replaces a deal table by a mahogany one, and proceeds to let at a rent in excess of the amount registered; and that of a landlord of flats, who, in like circumstances, engages additional labour. Are they breaking the law?

Examining the words of the enactment, we find that the subject of the Tribunal's deliberations is first described as a contract conferring a right to occupy as a residence a house or part of a house . . . in consideration of a rent which includes payment for the use of furniture or for services: this by subs. (1) of s. 2, a section which itself contains no sanctions at all, though it is the section providing for the reduction, etc., of rent, and contains five other subsections. So far, tangible realty has been described only as "a house or part of a house." The next section, s. 3, deals with the register, which by subs. (2), is to contain entries of: (*a*) the prescribed particulars with regard to the contract; (*b*) a specification of *the premises* to which the contract relates; and (*c*) the rent as approved, reduced, etc. It seems plausible, at first sight, that "the premises" in this case is merely a generic term for "house or part of a house." But when we come to s. 4, which at last provides for the illegality of excess rent, we find that what is made not lawful is to require or receive payments on account of rent for *premises* in excess of the amount entered in the register as rent payable for those *premises*.

It certainly cannot have been the intention to fix a maximum rent for the house or part of a house without the furniture or services, so one is driven to the conclusion that the word "premises" means the subject-matter of the contract, and one corrects one's first impression of the interpretation of s. 3 (*b*) accordingly. I concede that the legislature is capable of using a word in different senses in the same enactment, but circumstances do not point to this being such an occasion.

But now let us turn to the regulations, and see what particulars have been prescribed (by the Minister of Health who, by s. 8 (*c*), is authorised to make regulations for prescribing anything which is required by the Act to be prescribed, and by s. 8 (*d*), generally for carrying into effect the provisions of the Act).

It appears that the Minister has not in terms purported to exercise his power under s. 8 (*c*) to prescribe particulars with regard to the contract under s. 3 (2) (*a*). What he has done is to invoke the more general authority delegated by s. 8 (*d*) to make regulations for generally carrying into effect the provisions of the Act, and reg. 12 enacts that "the particulars to be furnished by the tribunal to the local authority under s. 3 (3) of the Act . . . . shall be those set out in the second schedule," and makes no reference to s. 3 (2) at all. And s. 3 (3), unlike s. 3 (2), contains nothing to suggest delegation to the Minister. But Sched. II commences with a heading "Particulars to be entered in the register kept by a local authority," not "Particulars with regard to the contract to be entered in the register kept by a local authority." And in my submission, it is doubtful whether some of what follows can be said to be authorised by the words "generally for carrying into effect" of s. 8 (*d*). It may, indeed, be argued that when the Act sets out in s. 3 (2) three matters which are to be entered, two of them specific (the premises and the rent) and the other limited—the prescribed particulars with regard to the contract—it is telling the Minister that he may legislate with regard to that one topic, but not with regard to the others.

In the result, tribunals, told by s. 3 (3) to furnish to the local authority such particulars as are requisite (not as the Minister may consider requisite) for enabling them to discharge their functions under the earlier provisions of the section, are ordered by the Minister to furnish particulars under eight heads, and in one important case at least what they are so to furnish could not be described as "particulars with regard to the contract" if it were desired to fall back on s. 3 (2) (*a*). And in two paragraphs, as mentioned, the word "premises" occurs; and this time it is rather difficult to see how the meanings can be identical, or, if they are, how they can be identical with the meaning of the word as used in s. 3 (2) (*b*) and s. 4 (1) (*a*) of the Act.

For para. 1 requires "specification of *the premises* to which the contract referred to the tribunal relates . . ." and the sensible interpretation would be that "premises" means the house or part of a house plus the furniture or attendance covered by the contract. But para. 3 runs "whether furniture is provided by the lessor for the use of the lessee, and, if so, whether *the premises* are furnished by the lessor fully, or in part, or to a slight extent." Here, it would seem, "premises" must mean the house or part of a house alone, and if this meaning were to be given to the word when used in s. 4 (1) (*a*) the Act would indeed do very little towards fulfilling the object with which it was passed.

But perhaps the most sinister feature of reg. 3 is its classification of furnished premises, which looks like the work of one accustomed to pigeon-holing, and, if necessary, adopting Procrustean methods for the purpose. For there is nothing *in the Act* to warrant this division into fully, partly, and, to a slight extent furnished premises, and if the underlying idea is to anticipate the machinations of a landlord who might, as suggested in my hypothetical example, frustrate the object of the enactment by replacing a deal table with a mahogany one, the idea may be praiseworthy, but the method none the less *ultra vires*. Incidentally, the suggested division might lead tribunals to suppose that they could never take quality into consideration when deciding references.

In my submission, the problem suggested at the end of my second paragraph should be treated as one of identity, and approached and decided in a manner analogous to the "loss of identity" through reconstruction or conversion questions, which, in *Sinclair* v. *Powell* [1922] 1 K.B. 393 (C.A.), *Abrahart* v. *Webster* [1925] 1 K.B. 563 (C.A.), and numerous other cases, came up for decision under the Increase of Rent, etc., Acts, 1920 to 1939, in connection with decontrol, apportionment, etc. Under the Furnished Houses (Rent Control) Act, 1946, the issue would be whether the alterations effected as regards furniture or attendance substantially changed the "premises," meaning thereby the house or part of a house and the furniture and attendance, into "something different."

TO-DAY AND YESTERDAY

October 21.—On 21st October, 1555, the Gray's Inn Benchers ordered "that allowance at the accounts should be made by the auditors to the steward for every mess as followeth; viz., for every mess of a roster in beef 6d.; for every loin of mutton 6d.; and for every boiler in beef a mess 11d."

October 22.—On 22nd October, 1617, Gray's Inn appointed Sir Thomas Ireland Dean of the Chapel, Richard Higgins pensioner and Nicholas Parry fueller. Ireland was Vice-Chamberlain of the County Palatine of Chester and author of an abridgment of Dyer's reports. He had been Reader in 1608, having been previously passed over "for just and weighty causes," but subsequently chosen on the recommendation of Robert Cecil, Earl of Salisbury. The pensioner was a senior member of the Bar who collected the revenue of the society and superintended the expenditure. Parry was at this time puisne butler. Only two years previously the fueller appointed was a Bencher.

October 23.—On 23rd October, 1638, the whole Society of Gray's Inn met in Hall under the presidency of the senior Bencher, Sir John Bankes, then Attorney-General, to hear a letter from Charles I recommending them to contribute to the restoration of St. Paul's Cathedral, because he was unwilling that there should be "no mention of so noble a Society in the contribution to so great and glorious a work, to the which you have a more immediate relation than other places, your whole Society being twice in a year by the orders of your House . . . to repair together to that Church." [On the Sunday before each Reading, the Reader went in state to a sermon at Paul's Cross.] The King directed "a book to be made wherein to insert the names of every member of your House in their degrees with the sum which each man shall contribute," as a monument of their charitable dispositions.

October 24.—On 24th October, 1631, Sir Thomas Richardson, appointed Chief Justice of the King's Bench, was conducted to the Bar of the Court where Lord Keeper Coventry made him a short address. The writ appointing him was then read and, having been sworn in, he took his place and began business. He died in 1635.

October 25.—On 25th October, 1639, the Gray's Inn Benchers ordered "that no man be admitted into any of the butlers' places hereafter unless he be a sufficient clerk to write and read and, inasmuch as Wethered is conceived a clerk, he is to be taken into consideration to be admitted to some place when it shall fall void." William Girlinge, the Steward, was admitted to a chamber "in Bestney's Building next the Hall." It was also ordered that the Chief Butler for the time being should give the Treasurer security for the discharge of all the duties of his office.

October 26.—On 26th October, 1660, it was ordered that all the gentlemen of Gray's Inn in town "be in commons or cast into commons in the Grand Weeks in this term," and that "all that are in town shall be in commons or cast into commons half a week and pay their extraordinary towards the charge of the Grand Day." The Restoration had brought about a return to old customs.

October 27.—On 27th October, 1671, the Gray's Inn Benchers ordered that none under seven years' standing might be called to the Bar, save such as had been two years in Staple Inn or Barnard's Inn and five years in Gray's Inn, and that none might be called who had not been in commons two weeks every term and four weeks every long vacation for five years, and who had not performed six grand moots in the Library and four at the Inns of Chancery. Two barristers of three years' standing must preside at the Library moots held thrice a week in moot weeks.

The Way Out

The suicide of Hermann Goering, his desperate escape from the gallows, adds one more to the many who have resorted to that last desperate expedient. National and political antagonisms naturally tend to inspire such gestures. The period when the idea of Irish liberty became mixed with the ideology of the French Revolution produced two particularly sensational instances in these islands. The Reverend William Jackson was a clergyman of the Established Church who visited Paris and formed political connections there. He returned first to England and then to Ireland to examine the possibilities of an invasion. He was, however, arrested, tried in Dublin for high treason and convicted. On 30th April, 1795, he was brought to the Court of King's Bench to receive sentence. As he was being driven thither in a coach, it was noticed that he was very ill, leaning out of the window and vomiting violently. In court, when the Attorney-General asked for judgment and the prisoner was set forward, he presented a dreadful spectacle. His body was in a state of profuse perspiration and a dense steam ascended from his head. Minute and irregular convulsions passed over his face. His eyes were nearly closed and when they opened at intervals there was the glare of death in them. He collected all his strength to stand with his arms folded and his face strained to an expression of composure, but he rocked from side to side. When called on by the Clerk of the Crown, he succeeded in holding up his hand for a second but it dropped immediately. While his counsel argued in arrest of judgment, the windows were opened to relieve him by fresh air, but before they had finished speaking, he fell in the dock and died. The body was left unmoved till the following day, when an inquest was held and a quantity of poison was found in the stomach. Three years later, the failure of the calamitous rebellion of 1798, when Irish rebels were again looking to France for aid, produced the suicide of the young leader, Wolfe Toné, who cut his throat on the day fixed by the court martial which had tried him for his execution. While he was dying, his counsel were arguing in the Court of King's Bench that his trial by court martial was illegal and a constitutional tug-o'-war was starting, the Chief Justice ordering the preparation of a writ of habeas corpus and sending messengers to stop the execution while the military would not acknowledge the court's authority. The prisoner solved it all by dying in a week.

Resort to Suicide

Common criminals too have taken the same way out. In England in recent times the most sensational occasion was the suicide of Whitaker Wright at the Law Courts in the Strand, in 1904. The end of his extraordinary financial career had come when, after a long and fair trial at bar in the King's Bench, he had been convicted under s. 83 of the Larceny Act, 1861, and sentenced to seven years' penal servitude. For a quarter of a century, he had gambled in England and America, and at his zenith, he was reputed to have wealth beyond the dreams of avarice. Within twenty minutes of the end of his trial, as he was talking to his friends in a room in the courts, he was about to light a cigar when suddenly he threw down the match and fell forward breathing heavily. A doctor, who was called, pronounced him dying. He had poisoned himself but how he had procured and concealed the poison remained a mystery. The great Jonathan Wild, detective, receiver of stolen goods and inventor of the lost property office in the early eighteenth century, tried to cheat the gallows with laudanum but swallowed too much and only vomited.

COUNTY COURT CALENDAR FOR NOVEMBER, 1946

Circuit 1—Northumberland
His Hon. Judge Richardson
Alnwick, 1
Berwick-on-Tweed, 12
Blyth,
Consett, 8
Gateshead, 5
Hexham, 26
Morpeth, 4
†*Newcastle-upon-Tyne, 13, 14 (B.), 15 (J.S.)
North Shields, 28
Seaham Harbour, 25
South Shields, 6
Sunderland, 20, 21

Circuit 2—Durham
His Hon. Judge Gamon
Barnard Castle,
Bishop Auckland, 19
Darlington, 6, 20
*Durham, 5 (J.S.), 18
Guisborough, 27
Leyburn, 11 (R.)
Middlesbrough, 14 (J.S.), 26
Northallerton, 21
Richmond, 7
†*Stockton-on-Tees, 12
Thirsk, 14
West Hartlepool, 13

Circuit 3—Cumberland
His Hon. Judge Allsebrook
Appleby,
†*Barrow-in-Furness, 6, 7
Brompton,
*Carlisle, 20
Cockermouth, 14
Haltwhistle,
*Kendal, 19
Keswick,
Kirkby Lonsdale,
Millom, 12
Penrith, 21
Ulverston,
†*Whitehaven, 13
Wigton,
Windermere, 14 (R.)
*Workington,

Circuit 4—Lancashire
His Hon. Judge Peel, O.B.E., K.C.
Accrington, 21
†*Blackburn, 8, 15, 22 (J.S.), 27 (R.B.)
†*Blackpool, 6, 7, 13, 14, 20 (J.S.), (R.B.)
Chorley, 11
Lancaster, 1
†*Preston, 5, 19 (J.S.), 29 (R.B.)

Circuit 5—Lancashire
His Hon. Judge Harrison
†*Bolton, 6, 20 (J.S.), 27
Bury, 4 (J.S.), 18
*Oldham, 7, 21, 28 (J.S.)
Rochdale, 8 (J.S.), 22
*Salford, 5, 19, 25, 26 (J.S.)

Circuit 6—Lancashire
His Hon. Judge Crosthwaite
His Hon. Judge Proctor
†*Liverpool, 1, 4, 5, 6, 7, 8, 11, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
St. Helens, 6, 20
Southport, 5, 19
Widnes, 8
*Wigan, 7, 21

Circuit 7—Cheshire
His Hon. Judge Burgis
Altrincham, 6 (J.S.), 27
*Birkenhead, 1, 6 (R.), 13, 19, 20, 26, 27 (R.), 28, 29
Chester, 5
*Crewe, 8
Market Drayton, 15
Nantwich, 22
*Northwich, 14
Runcorn, 12
*Warrington, 7, 21 (J.S.)

Circuit 8—Lancashire
His Hon. Judge Rhodes
Leigh, 1, 15
†*Manchester, 5, 6, 7, 8 (B.), 11, 12, 13, 14, 19, 20, 21, 22 (B.), 25, 26, 27, 28

Circuit 10-Lancashire
His Hon. Judge Raleigh Batt
*Ashton-under-Lyne, 1, 15, 29
*Burnley, 7, 8
Colne, 6
Congleton, 22
Hyde, 13
*Macclesfield, 12
Nelson,
Rawtenstall, 20
Stalybridge, 21 (J.S.)
*Stockport, 19, 26, 27 (J.S.)
Todmorden, 5

Circuit 12—Yorkshire
His Hon. Judge Rice-Jones
*Bradford, 14, 15, 19 (J.S.)
Dewsbury, 21
*Halifax, 7, 8
*Huddersfield, 5, 6
Keighley, 12
Otley, 13
Skipton, 11
Wakefield, 5 (R.), 20

Circuit 13—Yorkshire
His Hon. Judge Essenhigh
*Barnsley, 6, 7, 8
Glossop, 20 (R.)
Pontefract, 18, 19, 20
Rotherham, 12, 13
*Sheffield, 1, 5 (J.S.), 14, 15, 21, 22, 28, 29

Circuit 14—Yorkshire
His Hon. Judge Stewart
His Hon. Judge Omerod
Harrogate, 22
Leeds, 6, 13, 14 (J.S.), 20, 27, 28 (J.S.)
Ripon,
Tadcaster,
York, 5, 19

Circuit 16—Yorkshire
His Hon. Judge Griffith
Beverley, 8
Bridlington, 4
Goole, 19 (R.), 22
Great Driffield, 18
†*Kingston upon Hull, 11 (R.), 12 (R.), 13, 14, 15 (J.S.), 18 (R.B.), 25
Malton, 20
Scarborough, 5, 6, 12 (R.B.)
Selby, 1
Thorne, 21
Whitby, 6 (R.), 7

Circuit 17—Lincolnshire
His Hon. Judge Shove
Barton-on-Humber,
†*Boston, 7 (R.), 14, 21 (R.B.)
Brigg,
Caistor,
Gainsborough, 13 (R.), 18
Grantham, 6 (R.), 15
†*Great Grimsby, 5, 6 (J.S.), 7 (R.B.), 8, 27 (J.S.), 28, 29
(*R. every Wednesday*)
Holbeach, 28 (R.)
Horncastle, 22
*Lincoln, 7 (R.) (R.B.), 11
*Louth, 19
Market Rasen, 1, 19 (R.)
Scunthorpe, 4 (R.), 12, 26
Skegness, 4
Sleaford, 5 (R.)
Spalding, 20
Spilsby, 8 (R.)

Circuit 18—Nottinghamshire
His Hon. Judge Capon
Doncaster, 8, 20, 21
East Retford, 5 (R.)
Mansfield, 4, 18
Newark, 5, 12 (R.)
*Nottingham, 7 (R.B.), 13, 14, 15 (J.S.), 27, 28, 29 (B.)
Worksop, 12 (R.), 19

Circuit 19-Derbyshire
His Hon. Judge Willes
Alfreton, 19
Ashbourne,
Bakewell, 12
Burton-on-Trent, 13 (R.B.)
Buxton, 11
Chesterfield, 8, 15
*Derby, 6, 19 (R.B.), 20, 21 (J.S.)
Ilkeston, 26
Long Eaton, 14
Matlock,
New Mills,
Wirksworth, 7

Circuit 20—Leicestershire
His Hon. Judge Field, K.C.
Ashby-de-la-Zouch, 13
*Bedford 12, 21 (R.B.)
Hinckley, 20
Kettering, 19
*Leicester, 4, 5, 6 (J.S.), (B.), 7 (B.), 8 (B.)
Loughborough, 12
Market Harborough, 18
Melton Mowbray, 22
Oakham, 15
Stamford, 11
Wellingborough, 14

Circuit 21—Warwickshire
His Hon. Judge Finnemore
His Hon. Judge Tucker (Add.)
*Birmingham, 1, 4, 5, 6, 7, 8, 11, 12 (B.), 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 22—Herefordshire
His Hon. Judge Langman
Bromsgrove, 15
Bromyard,
Evesham, 27
Great Malvern, 4
Hay,
*Hereford, 12, 19
*Kidderminster, 5, 26
Kington,
Ledbury,
*Leominster, 11
Ross,
*Stourbridge, 7, 8
Tenbury,
*Worcester, 21, 22

Circuit 23 — Northamptonshire
His Hon. Judge Forbes
Atherstone, 21
Banbury, 15
Bletchley, 19
Chipping Norton,
*Coventry, 4 (R.B.), 5, 25
Daventry, 20
Leighton Buzzard,
*Northampton, 11, 12, 26 (R.) (R.B.)
Nuneaton, 6
Rugby, 7
Shipston-on-Stour, 18 (R.)
Stow-on-the-Wold, 12
Stratford-on-Avon, 28
Warwick, 22 (R.B.)

Circuit 24 — Monmouthshire
His Hon. Judge Thomas
Abergavenny,
Abertillery, 12
Bargoed, 13
Barry, 7
†*Cardiff, 4, 5, 6, 8, 9
Chepstow,
Monmouth, 19
*Newport, 21, 22
Pontypool and Blaenavon, 20, 25
*Tredegar, 14

Circuit 25—Staffordshire
His Hon. Judge Finnemore
*Dudley, 12, 19, 26
*Walsall, 7, 21, 28
*West Bromwich, 13, 20 27
*Wolverhampton, 1, 15, 22, 29

Circuit 26—Staffordshire
His Hon. Judge Whitmee
*Hanley, 7, 21, 22
Leek, 11
Lichfield, 13
Newcastle - under - Lyme, 12
Redditch, 8
*Stafford, 1
*Stoke-on-Trent, 6
Stone, 25
Tamworth, 14
Uttoxeter, 29

Circuit 28-Shropshire
His Hon. Judge Samuel, K.C.
Brecon, 15
Bridgnorth, 13
Builth Wells, 7
Craven Arms, 6
Knighton, 5
Llandrindod Wells, 8
Llanfyllin,
Llanidloes,
Ludlow, 11
Machynlleth,
Madeley, 14
Newtown,
Oswestry, 12
Shrewsbury, 18, 21
*Wellington, 19
Welshpool,
Whitchurch, 20

Circuit 29—Caernarvonshire
His Hon. Judge Evans, K.C.
Bala,
†*Bangor, 4
Blaenau Festiniog, 12
*Caernarvon, 6
Colwyn Bay,
Conway, 7
Corwen,
Denbigh,
Dolgelly,
Flint,
Holyhead,
Holywell, 15
Llandudno,
Llangefni,
Llanwrst, 8 (R.)
Menai Bridge, 5
Mold, 19 (R.)
*Portmadoc, 11
Pwllheli, 8
Rhyl, 13
*Ruthin, 14
Wrexham, 20, 21

Circuit 30—Glamorganshire
His Hon. Judge Williams, K.C.
*Aberdare, 26
Bridgend, 18 (R.), 19, 20, 21, 22
Caerphilly, 14 (R.)
Merthyr Tydfil, 28
*Mountain Ash, 27
Neath, 13, 14, 15
*Pontypridd, 5, 6, 7, 8
*Porth, 4
Port Talbot, 12
*Ystradyfodwg,

Circuit 31—Carmarthenshire
His Hon. Judge Morris, K.C.
Aberayron,
†*Aberystwyth, 22
Cardigan,
†*Carmarthen and Ammanford, 5, 6
†*Haverfordwest, 20
Lampeter, 1
Llandovery,
Llanelly, 26, 28
Narberth, 18
Newcastle Emlyn,
Pembroke Dock, 19
*Swansea, 11, 12, 13, 14, 15

Circuit 32—Norfolk
His Hon. Judge Pugh
Beccles, 5
Diss, 12
Downham Market, 21
East Dereham,
Fakenham,
†*Great Yarmouth, 7
Harleston,
Holt, 13
†*King's Lynn, 14
*Lowestoft, 6
North Walsham,
*Norwich, 18, 19, 20
Swaffham, 27
Thetford, 26

Circuit 33—Essex
His Hon. Judge Hildesley, K.C.
Braintree, 8
*Bury St. Edmunds, 12
*Chelmsford, 5
Clacton, 26
Colchester, 20, 21
Felixstowe, 27
Halesworth,
Halstead,
Harwich, 22
Ipswich, 13, 14, 15
†*Maldon, 7
Saxmundham, 25
Stowmarket, 29
Sudbury,
Woodbridge, 6

Circuit 34-Middlesex
His Hon. Judge Tudor Rees
His Hon. Judge Collingwood (Add.)
Uxbridge, 5, 12, 19, 26

Circuit 35 — Cambridgeshire
His Hon. Judge Campbell
Biggleswade, 26
Bishops Stortford, 27
*Cambridge 1 (R.B.), 13 (J.S.) (B.), 14, 29 (R.B.)
Ely, 11
Hitchin, 8
*Huntingdon, 7, 15 (R.)
Luton, 1, 14 (R.B.), 28 (J.S.) (B.), 29
March, 25
Newmarket, 15
*Oundle,
Peterborough, 1 (R.), 4, 5, 29 (R.)
Royston, 6
Saffron Walden,
Thrapston,
Wisbech, 12

Circuit 36—Berkshire
His Hon. Judge Hurst
*Aylesbury, 1, 15 (R.B.)
Buckingham, 26
Cheltenham, 12, 13
Henley-on-Thames,
High Wycombe,
Northleach, 11
Oxford, 7, 11 (R.B.), 18
Reading, 14 (R.B.), 20, 21, 22
Tewkesbury, 15
Thame,
Wallingford, 4
Wantage,
Witney, 27

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His Hon. Judge Sir Gerald Hargreaves
Chesham, 5
*St. Albans, 19
West London, 4, 5, 6, 11, 12, 13, 18, 20, 25, 26, 27

Circuit 38 - Middlesex
His Hon. Judge Andrew
His Hon. Judge Armstrong (Add.)
His Hon. Judge Carey Evans (Add.)
Barnet, 5, 19, 26
*Edmonton, 1, 7, 8, 14, 15, 21, 22, 28, 29
Hertford, 6
Watford, 12, 13, 20, 27

Circuit 39-Middlesex
His Hon. Judge Engelbach
His Hon. Judge Tudor Rees (Add.)
Shoreditch, 1, 4, 7, 8, 11, 12, 14, 15, 18, 19, 20, 21, 22, 25, 26, 28, 29
Windsor, 6, 13, 20, 27

Circuit 40-Middlesex
His Hon. Judge Alchin
His Hon. Judge Drucquer (Add.)
His Hon. Judge Tudor Rees (Add.)
Bow, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 41-Middlesex
His Hon. Judge Earengey, K.C.
His Hon. Judge Trevor Hunter, K.C. (Add.)
Clerkenwell, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 42-Middlesex
His Hon. Judge Neal
His Hon. Judge David Davies, K.C.
Bloomsbury, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 43-Middlesex
His Hon. Judge Bensley Wells
Marylebone, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 44-Middlesex
His Hon. Judge Drucquer
His Hon. Judge Davies, K.C. (Add.)
Westminster, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 45—Surrey
His Hon. Judge Hancock, M.C.
His Hon. Judge Hurst (Add.)
*Kingston, 1, 5, 8, 12, 15, 19, 22, 26, 29
*Wandsworth, 4, 6, 7, 11, 13, 14, 18, 20, 21, 25, 27, 28

Circuit 46-Middlesex
His Hon. Judge Neal
Brentford, 4, 7, 11, 14, 18, 21, 25, 28
*Willesden, 1, 5, 6, 8, 12, 13, 15, 19, 20 22, 26, 27, 29

Circuit 47—Kent
His Hon. Judge Daynes, K.C.
His Hon. Judge Hurst (Add.)
Southwark, 5, 7, 11, 12, 19, 21, 25, 26, Woolwich, 13, 27

Circuit 48—Surrey
His Hon. Judge Bensley Wells
His Hon. Judge Collingwood (Add.)
His Hon. Judge Dale (Add.)
Dorking, 14
Epsom, 5, 6, 13, 26, 27
*Guildford, 7, 21
Horsham, 28
Lambeth, 1, 4, 6, 8, 11, 12, 14, 15, 18, 19, 20, 21, 22, 25, 26, 29
Redhill, 20

Circuit 49—Kent
His Hon. Judge Clements
Ashford, 11
*Canterbury, 5
Cranbrook,
Deal, 15
*Dover,
Folkestone, 12
Hythe, 22
*Maidstone, 8
Margate, 14
*Ramsgate,
†*Rochester, 6, 7
Sheerness, 21
Sittingbourne, 19
Tenterden, 18

Circuit 50—Sussex
His Hon. Judge Archer, K.C.
Arundel, 22
Brighton, 1, 7, 8, 14, 21, 28, 29
†*Chichester, 15
*Eastbourne, 13
*Hastings, 5
Haywards Heath,
*Lewes, 25
Petworth,
Worthing, 19

Circuit 51 — Hampshire
His Hon. Judge Topham, K.C.
Aldershot,
Basingstoke, 13
Bishops Waltham,
Farnham, 8
*Newport,
Petersfield, 15
†*Portsmouth, 4 (B.), 7, 14, 21
Romsey,
Ryde, 27
†*Southampton, 5, 12, 13 (B.), 19, 20
*Winchester, 6

Circuit 52—Wiltshire
His Hon. Judge Jenkins, K.C.
*Bath, 7, 14
Calne,
Chippenham, 19 (R.)
Cirencester, 28
Devizes, 11 (R.)
Dursley,
*Frome, 20 (R.)
Hungerford, 18
Malmesbury, 21
Marlborough,
Melksham, 8
*Newbury, 4 (R.)
Stroud, 5
*Swindon, 6, 13 (B.)
Trowbridge, 1
Warminster,
Wincanton, 8 (R.)

Circuit 54-Somersetshire
His Hon. Judge Wethered
†*Bridgwater, 8
†*Bristol, 1 (B.), 4, 5, 6, 7, 15 (B.), 25 (J.S.), 26, 27, 28, 29 (B.)
Gloucester, 18, 19
Minehead, 19 (R.)
Newent,
Newnham,
Thornbury, 11
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Circuit 55 — Dorsetshire
His Hon. Judge Armstrong
Andover, 13 (R.)
Blandford,
*Bournemouth, 7 (R.), 12, 13
Bridport, 26
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*Dorchester, 1
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*Poole, 6, 20 (R.)
Ringwood,
*Salisbury, 7
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Circuit 56—Kent
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*Croydon, 4, 5, 15, 18, 19, 20, 29
Dartford, 7, 21
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Circuit 57-Devonshire
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Axminster, 18 (R.)
†*Barnstaple, 26
Bideford, 27
Chard, 21 (R.)
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Honiton, 18
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Wellington, 18 (R.)

Circuit 58—Essex
His Hon. Judge Trevor Hunter, K.C.
His Hon. Judge Daynes (Add.)
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Brentwood, 22 (R.)
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Ilford, 4 (R.), 5, 6, 11 (R.), 18 (R.), 19, 20, 25 (R.), 26, 27
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Circuit 59—Cornwall
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Bodmin,
Camelford,
Falmouth, 14 (R.)
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* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Harmes and Another *v.* Hinkson

Lord Macmillan, Lord Porter, Lord Simonds, Lord Uthwatt and Lord du Parcq. 13th May, 1946

Will—Testamentary capacity—Burden of proof.

Appeal, by special leave, from a decision of the Supreme Court of Canada reversing a decision of the Court of Appeal for Saskatchewan which reversed the judgment of the Surrogate Court of the Judicial District of Regina.

On the 4th April, 1941, one Harmes died in hospital at Regina, Saskatchewan. Two days later, the respondent, a barrister and solicitor, brought to the manager of the Canada Permanent Trust Company in Regina a document purporting to be the will of Harmes, dated the 3rd April, 1941, and naming the trust company as executors. The testator was a dying man when he signed the will. The disease from which he was suffering, though it might not impair the intelligence, induced mental torpor, ending in coma. By a devise and bequest of residue the respondent was a beneficiary under the will to the extent of over $50,000. The will was drawn by the respondent with no witness present until two nurses were called to witness its due execution. The validity of the will having been challenged by the next of kin, an order was made directing a trial in particular of the following issues: (*a*) the testamentary capacity of the deceased at the time of its execution; (*b*) its due execution; (*c*) the knowledge and volition of the testator as to its contents; and (*d*) the allegation that the execution of the will was procured by the undue influence of the respondent. The judge of the Surrogate Court (Hannon, J.S.C.) affirmed the will and decreed probate in solemn form. On appeal, the Court of Appeal for Saskatchewan (MacDonald and MacKenzie, JJ.A., Martin, C.J.S., dissenting) reversed that decision. The Supreme Court of Canada (Rinfret, Kerwin, Taschereau and Gillanders, JJ., Hudson, J., dissenting) restored the decree of the Surrogate Court, and the next of kin now appealed.

Lord du Parcq, giving the judgment of the Board, said that it was argued for the next of kin that the Surrogate Court judge had failed to give effect to two rules of law which, had he observed them, must have led him to a contrary conclusion. Those rules, which were said by Parke, B., not to admit of any dispute when he reaffirmed them in *Barry* v. *Butlin* (1838), 2 Moo. P.C. c. 480, were (1) that the *onus probandi* lay in every case upon the party propounding a will, who must satisfy the conscience of the court that the instrument was the last will of a free and capable testator; (2) that if a party prepared a will under which he took a benefit, that ought generally to excite the suspicion of the court, and called upon it to be vigilant and jealous in examining the evidence in support of the instrument. The second of those rules was laid down by Sir John Nicholl, in substance, in *Paske* v. *Ollat* (1815), 2 Phill. 323. Sir John Nicholl spoke of "the presumption" as well as the *onus probandi* being against the instrument, and, in a passage much relied on by counsel for the next of kin, said that the onus of proof might be increased by circumstances such as unbounded confidence in the drawer of the will; extreme debility in the testator; clandestinity, and other circumstances which might increase the presumption even so much as to be conclusive against the instrument. With regard to the first rule, it was always well to remember precisely what the familiar metaphor of "the burden of proof" meant, which, as Parke, B., said in the case cited, was that if no evidence was given by the party on whom the burden was cast, the issue must be found against him. Lord Dunedin in *Robins* v. *National Trust Co.* [1927] A.C. 515, 520, said that onus as a determining factor of the whole case could only arise if the tribunal found the evidence pro and con so evenly balanced that it could come to no conclusion. Then the onus would determine the matter. But if the tribunal, after hearing and weighing the evidence, came to a determinate conclusion, the onus need not be further considered. Whether or not the evidence was such as to satisfy the conscience of the tribunal must always be, in the end, a question of fact. The second rule was no more than an application to a will of the principle that when the only man who could prove a fact had a strong motive for asserting it, his evidence must be received with greater caution than that of a disinterested witness, and that every circumstance of legitimate suspicion which was found to exist must make any reasonable man less ready to accept his uncorroborated testimony. It did not mean that it must be rejected altogether. The burden of proof might be discharged; the adverse presumption might be rebutted. Sir John Nicholl's words were not to be understood as meaning that, at some point, which the law could define, the judge would be in a position to say that the presumption had become conclusive against the will, so that, if he were trying the case with a jury, it would be right to direct them that they must pronounce against it. If that were the meaning of the rule, the untenable proposition would result that it was a question of law whether or not a presumption of fact had been rebutted. That question must, however, always be one of fact. The true meaning of Sir John Nicholl's words was that, unless the tribunal were finally satisfied that its initial suspicions were unfounded, the burden of proof remained undischarged and the presumption must prevail. The appeal must be dismissed.

Counsel: *Holroyd Pearce*, K.C., and *R. M. Balfour* (of the Canadian Bar); *L. McK. Robinson*, K.C., and *Heber Nethery* (both of the Canadian Bar).

Solicitors: *Charles Russell & Co.*; *Blake & Redden.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

COURT OF APPEAL

Kent Trust, Ltd. *v.* Cohen and Others

Lord Greene, M.R., Morton and Tucker, L.JJ. 4th June, 1946

Moneylender—Memorandum of contract—Incomplete specification of cheques given as collateral security—Validity—Moneylenders Act, 1927 (17 & 18 *Geo.* 5, *c.* 21), *s.* 6 (2).

Appeal from a decision of Cassels, J. (90 Sol. J. 164; 174 L.T. 241).

In September, 1944, the defendant Cohen approached the plaintiffs for a loan of £1,000 which he required for an intended commercial transaction, and he offered the plaintiffs £150 as interest for the use of the £1,000 for five weeks. The defendant company offered, by way of collateral security, five cheques for £200, each payable consecutively weekly for the next five weeks, with a sixth cheque for £150 for the interest. It was agreed that, if interest at 90 per cent. worked out at less than the £150 when the whole transaction was completed, the plaintiffs should repay the defendants the balance out of the sixth cheque. The transaction was not completed as planned, and the plaintiffs now sued for the balance of principal and interest (at 48 per cent.) due to them. The memorandum of the contract recited, *inter alia*, that the defendants jointly and severally promised to pay the plaintiffs £1,000 for value received with interest at the rate of £90 per cent. per annum by five consecutive weekly instalments of £200 each, beginning on 15th October, 1944, and the balance of principal and interest in the sixth week, and that, as collateral security for that promissory note, the defendants were depositing five weekly post-dated cheques for £200 each, and an agreement relating to the transfer of a certain lease. Cassels, J., found that the defendant Cohen was well aware that he had given the cheque for £150 as additional security, and held that the transaction and the memorandum concerned were not such as to entitle the defendants to use s. 6 of the Moneylenders Act, 1927, to retain as against the plaintiffs the difference between what they should have repaid and what they had repaid in fact. He therefore gave judgment for the plaintiffs. The defendants now appealed.

Tucker, L.J., asked to give the first judgment, said that Cassels, J., in coming to the conclusion that there had been a sufficient memorandum to comply with the requirements of the statute, probably was founding himself on a sentence in the judgment of Farwell, J., in *In re a Debtor* (*No.* 18 *of* 1937), 159 L.T. 284, where, discussing the effect of the authorities which had been cited to him, he said that if the memorandum contained an obvious error which could easily be understood to be an error so that the debtor would appreciate the true position, the error would not be sufficient to affect the memorandum. Cassels, J., probably regarded this as an error and thought that, as the borrower had not, in fact, been prejudiced, he could no longer rely upon an insufficient memorandum. In his (Tucker, L.J.'s) view that was not the effect of Farwell, J.'s words; moreover, the omission of all reference to the cheque for £150 could not possibly be regarded as an error, or, at any rate, as the kind of error which Farwell, J., had in mind. There was no evidence that the omission to refer to the £150 was, in fact, due to any mistake.

The evidence was quite consistent with a deliberate omission (because it was not thought necessary) to mention the cheque for £150. The authorities made it clear that, in order to comply with s. 6 of the Act of 1927, where security was given, the memorandum must set out with accuracy what the security was. It had been contended for the plaintiffs that s. 6 should be construed differently according to the degree of education and intelligence possessed by the borrower. That was an impossible approach to the interpretation of this or any statute. On the clear interpretation of the section, it was necessary that the cheque, which formed an essential part of the security, should be referred to.

The appeal should be allowed.
MORTON, L.J., gave judgment agreeing.
LORD GREENE, M.R., agreed.
COUNSEL: *Quass; Vester.*
SOLICITORS: *Stone & Stone; Isadore Goldman & Son.*
[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Crawshay, deceased; Hore-Ruthven *v.* Public Trustee

Vaisey, J. 9th July, 1946

Will—Legacy settled on daughter and her children—Gift over in the event of her having no children who attain twenty-one—Codicil providing children of daughter's forbidden marriage not to take—Daughter dies leaving children of that marriage who attain twenty-one—Effect of codicil on gift over.

Adjourned summons.

The testator by his will, dated the 24th June, 1877, settled a legacy of £100,000 upon trust to pay the income thereof to his daughter for life. After her death, he directed that the investments representing the legacy should be held in trust for her issue as she should appoint and, in default of such appointment, in trust for her children who should attain twenty-one or, being daughters, marry under that age with their parents' consent. In the event of there being no child who should attain the age of twenty-one or being a daughter attain that age or marry (there was here no reference to consent) he directed the trustees to hold the legacy after the death of the daughter and the failure of her issue for the children of her brothers and sisters. By a codicil, after reciting that the daughter was engaged to marry W and that he disapproved of such marriage, the testator declared that none of the children of his daughter by W should take any interest in the trust fund but so that nothing herein contained should affect the interest of any other child of the daughter by any other husband. The testator died in 1879. The daughter married once only, namely W. There were two children of such marriage who attained twenty-one. The daughter having died, this summons raised the question whether the trust fund now passed to the daughter's nephews and nieces under the trusts in the will to take effect in the event of the daughter dying without children who attained twenty-one.

VAISEY, J., said that on the one hand there was the principle laid down in *Hillersdon* v. *Lowe* (1843), 2 Hare 355, namely, that the court would, if necessary, construe an inaccurate statement of the event in which a preceding trust would fail and a gift over to take effect thereon as equivalent to no more than "failing the preceding trusts" (*Ellicombe* v. *Gompertz*, 3 My. & Cr. 127; *In re Merceron's Trusts* (1876), 4 Ch. D. 182). On the other hand, there were many authorities where the fund had been held to fall into residue because the express event on which the gift over was to take effect had not actually happened (*Pride* v. *Fooks*, 3 De G. & J. 252; *In re Edwards* [1906] 1 Ch. 570). There was also the principle that where the terms of a will were plain and unmistakable a codicil must not be construed so as to interfere with the disposition of the will more than the words of the codicil required. The two documents, however, had to be read together. He thought this case was more on the lines of those to which he had first referred. He thought it very unlikely that the testator intended that if his daughter married W and had a child who attained twenty-one, the fund should go to the residuary legatees. He would declare that the £100,000 fund was held on her death on the trusts declared by the will in case she had no child who attained twenty-one.

COUNSEL: *A. H. Droop; Mumford; Geoffrey Cross; G. A. Rink; C. D. Myles; Neville Gray*, K.C., and *Ungoed Thomas.*
SOLICITORS: *Lawrence, Graham & Co.; Gilbert Samuel & Co.; Wellington Taylor & Sons; Farrer & Co.*
[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Eyre *v.* Johnson

Denning, J. 2nd April, 1946

Landlord and tenant—Breach of repairing covenant—Statutory restrictions on repair work—Premises delivered up unrepaired—Liability.

Action for damages for breach of a repairing covenant.

In 1931 the plaintiff landlord let premises to the defendant tenant for twenty-one years, with a right in the latter to break after fourteen years, which he duly did, the lease accordingly coming to an end in December, 1944. The repairing covenants in the lease included undertakings as to internal and external painting, and a general covenant to keep in repair and deliver up the premises. The tenant did little to the premises after the outbreak of war in 1939, little, if anything, having been done to them before then. When, six months before the prospective end of the tenancy in December, 1944, the tenant came to consider the question of repairs, such work could only be done under a licence, which he was unsuccessful in obtaining. The premises having therefore been delivered up unrepaired, the landlord brought this action.

DENNING, J., said that the defendant argued that, as it was illegal under the regulations for him to perform the repairing covenant, he could not be made liable in damages. The first answer to that was that the condition of non-repair was really brought about by a series of breaches of the covenant to keep in repair. He could have performed his covenants from 1939 to 1941 when there were no restrictions, or even from 1941 to 1944 when there were statutory limits, at first £500 and then £100, on what might be spent; there would then have been no difficulty. He could not rely on a condition of things which his own breaches had brought about. Further, although illegality which completely forbade the performance of a contract might give rise to frustration, in some cases illegality in the performance of one clause which did not amount to frustration in any sense did not carry with it the necessary consequence that the party in breach was absolved from paying damages. The landlord had performed all his part of the bargain; the tenant had had the premises all this time. The fact that it had become difficult, even if it were impossible, for the tenant to perform the covenant, did not relieve him from the obligation of paying damages. When *Baily* v. *De Crespigny* (1869), L.R. 4 Q.B. 180, on which the tenant relied, was considered by the House of Lords in *Matthey* v. *Curling* [1922] 2 A.C., at p. 228, Lord Buckmaster said that, the lessee having bound himself to do these definite acts, it was no excuse that circumstances which he could not control had happened to prevent his compliance. In that case the tenant was held liable on his repairing covenant although circumstances which he could not control had prevented his compliance. His lordship gave judgment for the landlord for £670.

COUNSEL: *Beney*, K.C., and *O'Malley; Garland.*
SOLICITORS: *Lee & Pembertons; Sydney Redfern & Co.*
[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. G. A. BOWRING

Mr. Geoffrey Andrew Bowring, solicitor, of Messrs. G. F. Hudson, Matthews & Co., solicitors, Queen Victoria Street, London, E.C.4, died on Thursday, 3rd October, aged sixty-seven. He was admitted in 1903.

MR. H. A. E. HEY

Mr. Herbert Alfred Edward Hey, solicitor, of Messrs. Holmes, Beldam & Co., solicitors, of Littlehampton, died recently, aged sixty-five. He was admitted in 1905, and had been town clerk of Arundel since 1927.

SOCIETIES

THE LAW SOCIETY

THE LAST REFRESHER COURSES

The end of the series of refresher courses which the Council have provided in London for solicitors returning to civil life after national service draws near. Over fifteen hundred people have completed courses in London and thirty-four are attending the current evening course which ends on the 1st November. The Council intend to hold refresher courses as long as there is a demand for them, but the only firm evidence of such demand can be in the number of entries and inquiries for the courses. These numbers are now very small; this is only to be expected as there are comparatively few solicitors still engaged in whole-time national service who will want refresher courses. The Council are, however, anxious to make sure that everything possible is done to meet the needs of those still serving—mainly those whose demobilisation has been delayed for some reason and who must be given every possible assistance on their return to civil life.

Any solicitor now engaged in whole-time national service who will wish to take a refresher course on his return to civil life should accordingly notify the Secretary of that fact as soon as possible. The Council hope that solicitors who are in practice will co-operate in this matter by discovering whether any of their partners or assistant solicitors who are still serving wish to take courses and letting the Secretary know.

In the hope that one more whole-time course and one more part-time course will enable the whole demand for refresher courses to be met, there will be an interval before these courses start. Accordingly a whole-time course (A12) will be run from Monday, the 28th October, to Friday, the 29th November;

a part-time course (B9) will be run from Monday, the 25th November, 1946, to Friday, the 31st January, 1947, inclusive, with a break from Saturday, 21st December, to Sunday, 29th December, inclusive; and a Local Government course will be run from Monday, the 18th November, to Saturday, the 23rd November, 1946, inclusive.

UNITED LAW SOCIETY

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 14th October, Mr. R. J. Kent in the chair. Mr. S. E. Redfern proposed: "That this House has no confidence in His Majesty's Government." Mr. W. G. Galbraith opposed. Messrs. R. G. Plowman, C. H. Pritchard, E. D. Smith, O. T. Hill, Miss Berman, Messrs. F. H. Butcher, A. E. Tritschlu, G. Green and W. H. C. Cleveland-Stevens also spoke. Mr. Redfern replied and on a division the motion was carried by six votes.

THE MAGISTRATES' ASSOCIATION

The first session of the annual conference of the Magistrates' Association, held on the 17th October, at the Central Hall, Westminster, dealt chiefly with the problem of the adolescent girl before the court.

Mr. J. A. F. WATSON (Finsbury) took the chair, and spoke on the need of every juvenile delinquent for help of the right kind at the right time; to provide this help, he said, was the weighty responsibility of the magistrate. The problem of the adolescent girl was one of the most difficult which the juvenile court had to face.

Mrs. D. S. WOOLLCOMBE (Plymouth City) said that, whereas well-to-do parents were able to give their children a background of security and stability, to train them spiritually as well as mentally, and to educate them gradually to responsibility, the girl of poorer parents grew up in chaotic and uncertain surroundings. She had suffered from irregular schooling, evacuation and sleeping in shelters; she left school at fourteen, did hard and monotonous work, and shouldered too early the responsibility of contributing to the family budget. Her parents had few, if any, standards of discipline, moral behaviour or religion. Self-reliant and courageous, mature and uninterested by boys of her own age, her one idea was a good time with older men. When put on probation she revolted against the first touch of discipline. In a remand home she would exchange experiences with other girls and women in like case; she was revolted by the rules and the religion, and found no welcome in the atmosphere. Next time she offended she might be sent to an approved school, and after eighteen months would go back to her old surroundings, no longer with the fear of the approved school before her eyes as the ultimate calamity. The girl brought up in an institution could often not adapt herself to a foster-home and got into trouble through lack of training and ignorance of the value of money. The way to deal with these adolescents would be to establish hostels for them with a really home-like atmosphere, with facilities for training in a full and enjoyable life, with friends who would understand and trust them, and give them a real working religious faith.

Dr. DORIS M. ODLUM, a consulting psychiatrist, said that the psychological approach was only another expression for the attitude of every magistrate who took an interest in the reality of the human being before him and considered the effects upon him of the treatment he prescribed; who shared with the physician the objective outlook and the aim of restoring and reconstructing. At present, she said, the trained psychiatrist did not see the offender for long enough to be able to do much good.

Next day the conference met in the Mansion House. The Lord Mayor (Sir CHARLES DAVIS) spoke in his address of welcome of the widening scope of the magistrates' work and the greater need for an effort to qualify himself for it.

LORD SANKEY, the chairman, reported steady progress and a membership of nearly 6,000. The association was arranging a course of study which would help the new magistrate greatly to understand what the law really was and how it was administered. Experience was, however, the best school, and he recommended recruits to sit frequently on the bench and study the cases that came before them.

TREATMENT IN THE OPEN PRISON

Mr. C. T. CAPE (Governor, Strangeways Prison, Manchester) brought evidence in support of the view of the Commissioners of Prisons in their recent report that "a more generous estimate of the trustworthiness of many convicted men may more safely be taken than was commonly supposed." He spoke of his father's work in transforming the Doms, once a criminal tribe of the Himalaya foothills, into a law-abiding community. In May, 1930, he had been in charge of the first experiment in training Borstal boys in an open camp at Lowdham Grange, Nottinghamshire. The first party of forty-three had marched there from Feltham, and had built a settlement in which a spirit and a tradition had been created which had fully justified the hopes of the reformers. At the same time, picked first-offenders had been sent to Wakefield from North of England prisons and had lived in huts remote from any town and without barriers or guards. The most dramatic experiment had been a product of the outbreak of war, when some 200 men had been moved to Lowdham from Wakefield. Many had been considered unsuitable, many were at the early stage of a long sentence. Only two absconded—one soon returned of his own accord—and less than 10 per cent. had to be transferred because they failed to maintain the high standard of conduct and discipline. A surprising feature of the experiment was the good behaviour of prisoners with previous bad records. Mr. Cape hoped for a considerable extension of practical and progressive measures for the treatment and training of all types of prisoners, based on more generous terms than had hitherto been commonly supposed safe.

TRAINING OF MAGISTRATES

At the afternoon session, the Lord Chancellor, LORD JOWITT, said that the magistrate required a passionate desire to try to do justice, to see that he understood the details of each case, and a remembrance that the man on his trial was in a difficult position and must be given every chance of putting before the court what he wanted to say. He warned magistrates never to try to be funny, and to remember that it was dreadfully easy to be funny at the expense of other people. That magistrate was doing a good job who was never mentioned in the papers. He advised magistrates, "Don't throw your weight about; listen carefully; see that the accused person's lack of education and knowledge does not prevent him from putting his case." He would far rather have the unprofessional magistrates of the present day for the administration of justice in a democracy, than try to replace them by stipendiaries, who could not possibly be found in sufficient numbers.

Mr. J. CHUTER EDE, M.P., Home Secretary, said that the esteem in which the law was held in this country depended far more upon the way in which justice was administered in the magistrates' courts than in the higher courts. Of all the criminal cases heard, 99.7 per cent. were disposed of in the courts of summary jurisdiction. In addition, the chairman of quarter sessions was essentially a lay justice, even if he had legal qualifications, and when the jury had found an offender guilty the lay magistrates had the duty of assessing the sentence. A fair number of the remaining 0.3 per cent. of cases stayed, therefore, within the jurisdiction of the lay justices. The selection of magistrates was very difficult. Frequently the most promising candidates were disappointing and the most unpromising fully justified their appointment. The clerk had a duty to advise the bench, and when he had advised rightly once, the responsibility of action rested with the bench.

The Government, whether through the Home Secretary or through the Lord Chancellor, could not be responsible for training magistrates. As the separation of the judiciary from the executive was so vital a feature of the administration of justice, no instruction must be given by the executive to magistrates on the way in which they should act. The association could truly claim to be completely independent of Government control. The Home Secretary hoped that it would undertake the task of training magistrates even more intensively than it had in the past. Experts addressed magistrates at conferences held by the association in the various districts, and this activity might be considerably extended. General principles, however, should not be applied to particular cases without careful study of all the evidence. The new magistrate must remember that his responsibility was as great as that of the oldest on the bench. He must understand all the available methods of reformation, and how they reacted on an offender. He must be prepared to sacrifice much time and leisure. An essential part of his training was to remember the victim of the crime as well as the criminal. Although magistrates were born and not made, natural gifts could be greatly extended and developed by suitable training, and this could not be formalised, but must spring from innate sympathy and understanding.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

ATOMIC ENERGY BILL [H.C.].	[11th October.
COINAGE BILL [H.C.].	[18th October.
COUNTY COUNCILS ASSOCIATION (SCOTLAND) BILL [H.C.].	[18th October.
PUBLIC WORKS LOANS (No. 2) BILL [H.C.].	[18th October.
UNEMPLOYMENT INSURANCE (EIRE VOLUNTEERS) BILL [H.C.].	[18th October.

Read Second Time:—

HILL FARMING BILL [H.C.].	[15th October.

Read Third Time:—

CABLE AND WIRELESS BILL [H.C.].	[15th October.
PUBLIC NOTARIES (WAR SERVICE OF ARTICLED CLERKS) BILL [H.L.].	[17th October.
SUPREME COURT OF JUDICATURE (CIRCUIT OFFICERS) BILL [H.L.].	[11th October.

In Committee:—

NATIONAL HEALTH SERVICE BILL [H.C.].	[21st October.

HOUSE OF COMMONS

Read First Time:—

ROAD TRAFFIC (DRIVING LICENCES) BILL [H.C.].

To revoke certain emergency provisions as to licences to drive motor vehicles, and make provision with respect to the grant of such licences to persons who have held such licences under the emergency provision; and to amend the law as to the destination of fees in respect of driving tests. [15th October.

Read Third Time:—

EDUCATION (SCOTLAND) BILL [H.L.].	[17th October.
POLICE (SCOTLAND) BILL [H.L.].	[17th October.

QUESTIONS TO MINISTERS

JUDGE ADVOCATE-GENERAL

Sir W. ALLEN asked the Secretary of State for War if he will give the date of appointment of the present Judge Advocate-General and his legal qualifications; whether the Judge Advocate-General decides appeals from the decisions of courts martial in consultation with the Army Council; and whether there is any appeal from his decisions.

Mr. BELLENGER: The present Judge Advocate-General was appointed on 17th September, 1934. He has been one of His Majesty's counsel since 1924 and a bencher of the Middle Temple since 1931. Before assuming his present appointment he served as Military and Air Force Deputy of the Judge Advocate-General and in charge of the Military and Air Force Department of his office from 1923 onwards.

The Judge Advocate-General does not decide appeals from courts martial. His function is to review the proceedings of all courts martial to see whether they have been regular and legal and he does this in normal course. He also advises on any petition against a finding of a court martial. Where in his opinion there are legal grounds for quashing proceedings of a court martial he so advises the appropriate Secretary of State. [15th October.

CORRECTIONS TO REGISTER ENTRIES

Sir FRANK SANDERSON asked the Minister of Health what steps are taken to see that amendments are made to records of births, marriages and deaths by the Registrar General, when the original registration has been proved to be inaccurate by proceedings in a court of law.

Mr. BEVAN: A registrar has no power to correct any error of fact or substance in a register entry except under the special conditions prescribed in the Registration Acts, which require in the case of marriage entries the personal attendance of witnesses before the registrar, and in the case of birth and death entries an application from an interested party supported by statutory declarations by two persons intimately concerned with the registration. I will, however, consider whether by improved administrative arrangements this procedure can be made to operate more effectively in the kind of case the hon. member has in mind. [17th October.

STATUTORY RULES AND ORDERS (CORRECTION)

Sir JOHN MELLOR asked the Minister of Labour whether, in view of the admitted inaccuracy of the explanatory notes to S.R. & O., 1946, Nos. 1278 and 1417, he has taken steps for their correction.

Mr. ISAACS: I have arranged for any necessary correction to be made. [17th October.

RULES AND ORDERS

S.R. & O., 1946, No. 1650/L. 20

SOLICITOR, ENGLAND

THE SOLICITORS ACT, 1941 (APPOINTED DAY) ORDER, 1942. DATED JUNE 18, 1942

I, John Viscount Simon, Lord High Chancellor of Great Britain, in pursuance of subsection (2) of section 30 of the Solicitors Act, 1941* (hereinafter called the Act), and every other power enabling me in that behalf, hereby appoint the sixteenth day of November, 1942, as the day on which section 2 of the Act which makes provision for the establishment of the Compensation Fund and for other matters connected therewith shall come into operation.

Dated the eighteenth day of June, 1942.

Simon, C.

* 4 & 5 Geo. 6, c. 46.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1637. **Additional Import Duties** (No. 3) Order. Oct. 12.

No. 1646. **Control of Fuel** (No. 3) Order, 1942, General Direction (Central Heating and Hot Water Plants) No. 6. Oct. 10.

No. 1645. Control of Fuel (Restriction of Heating) Order. Oct. 10.

No. 1657. **Control of Penicillin** (No. 2) Order. Oct. 11.

No. 1638. **East Sussex Town and Country Planning** (Special Interim Development) Order. Oct. 8.

No. 1652. **Joint Electricity Authorities** (Borrowing Power) Regulations. Oct. 10.

No. 1636/L. 19. **Matrimonial Causes** (Special Commission) Order. Oct. 9 (*ante*, p. 505).

No. 1625. **Poisons List** (Amendment) Order. Oct. 7.

No. 1626. Poisons (Amendment) Rules. Oct. 7.

No. 1650/L.20. **Solicitors Act, 1941** (Appointed Day) Order, 1942. June 18, 1942.

No. 1651/L. 21. Solicitors Act, 1941 (Appointed Day) Order, 1946. Aug. 2.

No. 1621. **Town and Country Planning** (General Interim Development) Order. Oct. 7.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved the appointment of Sir NOEL BARRE GOLDIE, K.C., to be a Commissioner of Assize on the South Eastern Circuit, to sit at Norwich and Ipswich.

Mr. FRED EILLS PRITCHARD, K.C., M.B.E., and Mr. GEOFFREY HUGH BENBOW STREATFEILD, K.C., M.C., have been appointed Commissioners of Assize on the Midland and Western Circuits respectively.

Notes

A rent tribunal has been set up covering Leeds, Castleford and Garforth. Its offices will be at District Bank Chambers, Bedford Street, Leeds. Members are: Mr. J. B. Beaumont (Chairman); Mr. G. H. Thompson (Reserve Chairman); Mr. A. Pickersgill. Reserve Members are Mr. D. H. Varley and Mr. R. J. Gordon.

Sir CYRIL RADCLIFFE, K.C., an Additional Member of the General Council of the Bar, has been elected Vice-Chairman, and the following were also appointed Additional Members of the Council: Mr. J. D. Casswell, K.C., Mr. Maurice FitzGerald, K.C., and Mr. George F. Kingham.

A public lecture will be given at The Hall of the Auctioneers and Estate Agents Institute, 29, Lincoln's Inn Fields, London, W.C.2, on "Some Practical Hints on Arbitration Procedure," by Sir Lynden Macassey, K.B.E., K.C., on Friday, 1st November, 1946, at 6 p.m. Admission free, without ticket. Advice of intention to be present would be appreciated by The Secretary, The Institute of Arbitrators, 10, Norfolk Street, London, W.C.2.

A rent tribunal covering Aylesbury, Bedford, Kettering, Lutons Corby, Newport Pagnell, Rushden, Letchworth, Irthlingborough) Wellingborough and Wolverton, and the Rural Districts of Newport Pagnell and Wing, has now been set up. Its office, will be at 18A, St. Mary's Street, Bedford. The members are: Mr. W. Carter (chairman); Mr. N. G. Flawn (reserve chairman, and Mr. F. C. Chambers. Reserve members are: Mr. H. E. White, Mr. A. Allebone and Mrs. D. I. Young. Orders have also been made adding the County Borough of South Shields to the area covered by the tribunal set up for the Gateshead district, and Esher Urban District to that covered by the tribunal set up for the Kingston district.

Wills and Bequests

Mr. William Bishop, of Claygate, Surrey, chief solicitor to the Southern Railway from 1923 to 1935, left £74,951, with net personalty £69,706.

Mr. L. R. Nash, solicitor, of Enfield, left £36,275, with net personalty £20,994.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., Oct. 28	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 29	Farr	Reader	Hay
Wed., ,, 30	Blaker	Hay	Farr
Thurs., ,, 31	Andrews	Farr	Blaker
Fri., Nov. 1	Jones	Blaker	Andrews
Sat., ,, 2	Reader	Andrews	Jones

	Group A.		Group B.	
	Mr. Justice Roxburgh	Mr. Justice Wynn-Parry	Mr. Justice Evershed	Mr. Justice Romer
Date.	*Witness.*	*Non-Witness.*	*Non-Witness.*	*Witness.*
Mon., Oct. 28	Mr. Blaker	Mr. Andrews	Mr. Farr	Mr. Hay
Tues., ,, 29	Andrews	Jones	Blaker	Farr
Wed., ,, 30	Jones	Reader	Andrews	Blaker
Thurs., ,, 31	Reader	Hay	Jones	Andrews
Fri., Nov. 1	Hay	Farr	Reader	Jones
Sat., ,, 2	Farr	Blaker	Hay	Reader